

**PARTS 762-790 [RESERVED]****PART 791—ALLOCATIONS OF HOUSING ASSISTANCE FUNDS****Subpart A—General Provisions**

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AUTHORITY: 42 U.S.C. 1439 and 3535(d).

SOURCE: 61 FR 10849, Mar. 15, 1996, unless otherwise noted.

**Subpart A—General Provisions****§ 791.101 Applicability and scope.**

This part describes the role and responsibility of HUD in allocation of budget authority (pursuant to section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439)) for housing assistance under the United States Housing Act of 1937 (Section 8 and public housing) and under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), and of budget authority for housing assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1710q). This part does not apply to budget authority for the public housing operating fund or capital fund.

[64 FR 26639, May 14, 1999]

**§ 791.102 Definitions.**

*Act.* The Housing and Community Development Act of 1974 (42 U.S.D. 1437), as amended.

*Allocation area.* A municipality, county, or group of municipalities or counties identified by the HUD field office for the purpose of allocating housing assistance.

*Assistant Secretary.* The Assistant Secretary for Housing or the Assistant

Secretary for Public and Indian Housing, as appropriate to the housing assistance under consideration.

*Budget authority.* The maximum amount authorized by the Congress for payments over the term of assistance contracts.

*Fiscal year.* The official operating period of the Federal government, beginning on October 1 and ending on September 30.

*Metropolitan area.* See MSA.

*MSA.* A metropolitan statistical area established by the Office of Management and Budget. The term also includes primary metropolitan statistical areas (PMSAs), which are the component parts of larger urbanized areas designated as consolidated metropolitan statistical areas (CMSAs). Where an MSA is divided among two or more field offices, references to an MSA mean the portion of the MSA within the State/Area Office jurisdiction.

*Public housing agency (PHA).* (1) Any State, county, municipality, or other governmental entity or public body which is authorized to administer a program under the 1937 Act (or an agency or instrumentality of such an entity).

(2) In addition, for purposes of the program of Section 8 tenant-based assistance under part 982 of this title, the term PHA also includes any of the following:

(i) A consortia of housing agencies, each of which meets the qualifications in paragraph (1) of this definition, that HUD determines has the capacity and capability to efficiently administer the program (in which case, HUD may enter into a consolidated ACC with any legal entity authorized to act as the legal representative of the consortia members);

(ii) Any other public or private non-profit entity that was administering a Section 8 tenant-based assistance program pursuant to a contract with the contract administrator of such program (HUD or a PHA) in effect on October 21, 1998; or

(iii) For any area outside the jurisdiction of a PHA that is administering a tenant-based program, or where HUD determines that such PHA is not administering the program effectively, a

private non-profit entity or a governmental entity or public body that would otherwise lack jurisdiction to administer the program in such area.

[61 FR 10849, Mar. 15, 1996, as amended at 64 FR 26639, May 14, 1999]

### Subparts B–C [Reserved]

#### Subpart D—Allocation of Budget Authority for Housing Assistance

##### § 791.401 General.

This subpart D establishes the procedures for allocating budget authority under section 213(d) of the Act for the programs identified in § 791.101. It describes the allocation of budget authority by the appropriate Assistant Secretary to the applicable Program Office Director in the HUD field office, and by the Program Office Director to allocation areas within their jurisdiction.

[61 FR 10849, Mar. 15, 1996, as amended at 64 FR 26639, May 14, 1999]

##### § 791.402 Determination of low-income housing needs.

(a) Before budget authority is allocated, the Assistant Secretary for Policy Development and Research shall determine the relative need for low-income housing assistance in each HUD field office jurisdiction. This determination shall be based upon data from the most recent, available decennial census and, where appropriate, upon more recent data from the Bureau of the Census or other Federal agencies, or from the American Housing Survey.

(b) Except for paragraph (c) of this section, the factors used to determine the relative need for assistance shall be based upon the following criteria:

- (1) *Population*. The renter population;
- (2) *Poverty*. The number of renter households with annual incomes at or below the poverty level, as defined by the Bureau of the Census;
- (3) *Housing overcrowding*. The number of renter-occupied housing units with an occupancy ratio of 1.01 or more persons per room;
- (4) *Housing vacancies*. The number of renter housing units that would be required to maintain vacancies at levels typical of balanced market conditions;

(5) *Substandard housing*. The number of housing units built before 1940 and occupied by renter households with annual incomes at or below the poverty level, as defined by the Bureau of the Census; and

(6) *Other objectively measurable conditions*. Data indicating potential need for rental housing assistance, such as the number of renter households with incomes below specified levels and paying a gross rent of more than 30 percent of household income.

(c) For the section 202 elderly program, the data used shall reflect relevant characteristics of the elderly population. The data shall use the criteria specified in paragraph (b)(1) and (6) of this section, as modified to apply specifically to the needs of the elderly population.

(d) Based on the criteria in paragraphs (b) and (c) of this section, the Assistant Secretary for Policy Development and Research shall establish housing needs factors for each county and independent city in the field office jurisdiction, and shall aggregate the factors for such jurisdiction. The field office total for each factor is then divided by the respective national total for that factor. The resulting housing needs ratios under paragraph (b) of this section are then weighted to provide housing needs percentages for each field office, using the following weights: population—20 percent; poverty—20 percent; housing overcrowding—10 percent; housing vacancies—10 percent; substandard housing—20 percent; other objectively measurable conditions—20 percent. For the section 202 elderly program, the two criteria described in paragraph (c) of this section are weighted equally.

(e) The Assistant Secretary for Policy Development and Research shall adjust the housing needs percentages derived in paragraph (d) of this section to reflect the relative cost of providing housing among the field office jurisdictions.

[61 FR 10849, Mar. 15, 1996, as amended at 64 FR 26639, May 14, 1999]

## § 791.403

### § 791.403 Allocation of housing assistance.

(a) The total budget authority available for any fiscal year shall be determined by adding any available unreserved budget authority from prior fiscal years to any newly appropriated budget authority for each housing program.

(b) Budget authority available for the fiscal year, except for that retained pursuant to § 791.407, shall be allocated to the field offices as follows:

(1) Budget authority shall be allocated as needed for uses that the Secretary determines are incapable of geographic allocation by formula, including—

(i) Amendments of existing contracts, renewal of assistance contracts, assistance to families that would otherwise lose assistance due to the decision of the project owner to prepay the project mortgage or not to renew the assistance contract, assistance to prevent displacement or to provide replacement housing in connection with the demolition or disposition of public housing, assistance in support of the property disposition and loan management functions of the Secretary;

(ii) Assistance which is—

(A) The subject of a line item identification in the HUD appropriations law, or in the table customarily included in the Conference Report on the appropriation for the Fiscal Year in which the funds are to be allocated;

(B) Reported in the Operating Plan submitted by HUD to the Committees on Appropriations; or

(C) Included in an authorization statute where the nature of the assistance, such as a prescribed set-aside, is, in the determination of the Secretary, incapable of geographic allocation by formula,

(iii) Assistance determined by the Secretary to be necessary in carrying out the following programs authorized by the Cranston-Gonzalez National Affordable Housing Act: the Homeownership and Opportunity Through HOPE Act under title IV and HOPE for Elderly Independence under section 803.

(2) Budget authority remaining after carrying out allocation steps outlined in paragraph (b)(1) of this section shall be allocated in accordance with the

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housing needs percentages calculated under paragraphs (b), (c), (d), and (e) of § 791.402. HUD may allocate assistance under this paragraph in such a manner that each State shall receive not less than one-half of one percent of the amount of funds available for each program referred to in § 791.101(a) in each fiscal year. If the budget authority for a particular program is insufficient to fund feasible projects, or to promote meaningful competition, at the field office level, budget authority may be allocated among the ten geographic areas of the country. The funds so allocated will be assigned by Headquarters to the field office(s) with the highest ranked applications within the ten geographic areas.

(c) At least annually HUD will publish a notice in the FEDERAL REGISTER informing the public of all allocations under § 791.403(b)(2).

[61 FR 10849, Mar. 15, 1996, as amended at 64 FR 26640, May 14, 1999]

### § 791.404 Field Office allocation planning.

(a) *General objective.* The allocation planning process should provide for the equitable distribution of available budget authority, consistent with the relative housing needs of each allocation area within the field office jurisdiction.

(b) *Establishing allocation areas.* Allocation areas, consisting of one or more counties or independent cities, shall be established by the field office in accordance with the following criteria:

(1) Each allocation shall be to the smallest practicable area, but of sufficient size so that at least three eligible entities are viable competitors for funds in the allocation area, and so that all applicable statutory requirements can be met. (It is expected that in many instances individual MSAs will be established as metropolitan allocation areas.) For the section 202 program for the elderly, the allocation area must include sufficient units to promote a meaningful competition among disparate types of providers of such housing (e.g., local as well as national sponsors, minority as well as non-minority sponsors). The preceding

sentence shall not apply to projects acquired from the Resolution Trust Corporation under section 21A(c) of the Federal Home Loan Bank Act.

(2) Each allocation area shall also be of sufficient size, in terms of population and housing need, that the amount of budget authority being allocated to the area will support at least one feasible program or project.

(3) In establishing allocation areas, counties and independent cities within MSAs should not be combined with counties that are not in MSAs.

(c) *Determining the amount of budget authority.* Where the field office establishes more than one allocation area, it shall determine the amount of budget authority to be allocated to each allocation area, based upon a housing needs percentage which represents the needs of that area relative to the field office jurisdiction. For each program, a composite housing needs percentage developed under § 791.402 for those counties and independent cities comprising the allocation area shall be aggregated into allocation area totals.

(d) *Planning for the allocation.* The field office should develop an allocation plan which reflects the amount of budget authority determined for each allocation area in paragraph (c). The plan should include a map or maps clearly showing the allocation areas within the field office jurisdiction. The relative share of budget authority by individual program type need not be the same for each allocation area, so long as the total amount of budget authority made available to the allocation area is not significantly reduced.

[61 FR 10849, Mar. 15, 1996, as amended at 64 FR 26640, May 14, 1999]

#### **§ 791.405 Reallocations of budget authority.**

(a) The field office shall make every reasonable effort to use the budget authority made available for each allocation area within such area. If the Program Office Director determines that not all of the budget authority allocated for a particular allocation area is likely to be used during the fiscal year, the remaining authority may be allocated to other allocation areas where it is likely to be used during that fiscal year.

(b) If the Assistant Secretary determines that not all of the budget authority allocated to a field office is likely to be used during the fiscal year, the remaining authority may be reallocated to another field office where it is likely to be used during that fiscal year.

(c) Any reallocations of budget authority among allocation areas or field offices shall be consistent with the assignment of budget authority for the specific program type and established set-asides.

(d) Notwithstanding the requirements of paragraphs (a) through (c) of this section, budget authority shall not be reallocated for use in another State unless the Program Office Director or the Assistant Secretary has determined that other allocation areas within the same State cannot use the available authority during the fiscal year.

#### **§ 791.406 Competition.**

(a) All budget authority allocated pursuant to § 791.403(b)(2) shall be reserved and obligated pursuant to a competition. Any such competition shall be conducted pursuant to specific criteria for the selection of recipients of assistance. These criteria shall be contained in a regulation promulgated after notice and public comment or, to the extent authorized by law, a notice published in the FEDERAL REGISTER.

(b) This section shall not apply to assistance referred to in §§ 791.403(b)(1) and 791.407.

#### **§ 791.407 Headquarters Reserve.**

(a) A portion of the budget authority available for the housing programs listed in § 791.101(a), not to exceed an amount equal to five percent of the total amount of budget authority available for the fiscal year for programs under the United States Housing Act of 1937 listed in § 791.101(a), may be retained by the Assistant Secretary for subsequent allocation to specific areas and communities, and may only be used for:

(1) Unforeseen housing needs resulting from natural and other disasters, including hurricanes, tornadoes, storms, high water, wind driven water, tidal waves, tsunamis, earthquakes, volcanic eruptions, landslides,

mudslides, snowstorms, drought, fires, floods, or explosions, which in the determination of the Secretary cause damage of sufficient severity and magnitude to warrant Federal housing assistance;

(2) Housing needs resulting from emergencies, as certified by the Secretary, other than disasters described in paragraph (a)(1) of this section. Emergency housing needs that can be certified are only those that result from unpredictable and sudden circumstances causing housing deprivation (such as physical displacement, loss of Federal rental assistance, or substandard housing conditions) or causing an unforeseen and significant increase in low-income housing demand in a housing market (such as influx of refugees or plant closings);

(3) Housing needs resulting from the settlement of litigation; and

(4) Housing in support of desegregation efforts.

(b) Applications for funds retained under paragraph (a) of this section shall be made to the field office, which will make recommendations to Headquarters for approval or rejection of the application. Applications generally will be considered for funding on a first-come, first-served basis. Specific instructions governing access to the Headquarters Reserve shall be published by notice in the FEDERAL REGISTER, as necessary.

(c) Any amounts retained in any fiscal year under paragraph (a) of this section that are not reserved by the end of such fiscal year shall remain available for the following fiscal year in the program under § 791.101(a) from which the amount was retained. Such amounts shall be allocated pursuant to § 791.403(b)(2).

## **PART 792—PUBLIC HOUSING AGENCY SECTION 8 FRAUD RECOVERIES**

### **Subpart A—General Provisions**

Sec.

792.101 Purpose.

792.102 Applicability.

792.103 Definitions.

### **Subpart B—Recovery of Section 8 Funds**

792.201 Conduct of litigation.

792.202 PHA retention of proceeds.

792.203 Application of amounts recovered.

792.204 Recordkeeping and reporting.

AUTHORITY: 42 U.S.C. 1437f note and 3535(d).

SOURCE: 59 FR 9409, Feb. 28, 1994, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 792 appear at 64 FR 26640, May 14, 1999.

### **Subpart A—General Provisions**

#### **§ 792.101 Purpose.**

The purpose of this part is to encourage public housing agencies (PHAs) to investigate and pursue instances of tenant and owner fraud and abuse in the operation of the Section 8 housing assistance payments programs.

[64 FR 26640, May 14, 1999]

#### **§ 792.102 Applicability.**

(a) This part applies to a PHA acting as a contract administrator under an annual contributions contract with HUD in any section 8 housing assistance payments program. To be eligible to retain section 8 tenant or owner fraud recoveries, the PHA must be the principal party initiating or sustaining an action to recover amounts from families.

(b) This part applies only to those instances when a tenant or owner committed fraud, and the fraud recoveries are obtained through litigation brought by the PHA (including settlement of the lawsuit), a court-ordered restitution pursuant to a criminal proceeding, or an administrative repayment agreement with the family or owner as a result of a PHA administrative grievance procedure pursuant to, or incorporating the requirements of, § 982.555 of this title. This part does not apply to cases of owner fraud in PHA-owned or controlled units, or where incorrect payments were made or benefits received because of calculation errors instead of willful fraudulent activities.

(c) This part applies to all tenant and owner fraud recoveries resulting from litigation brought by the PHA (including settlement of the lawsuit), or a court-ordered restitution pursuant to a